

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND
FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
v.)	I.D. # 0406018386
)	
)	
ANGELO CLARK,)	
)	
Defendant.)	

Date Submitted: August 1, 2006

Date Decided: January 31, 2007

OPINION

Upon Defendant's *Pro Se* Motion for Post-Conviction Relief – **DENIED IN PART**

Angelo Clark, Delaware Correctional Center, Paddock Road, Smyrna,
Delaware 19977, Defendant, *pro se*.

JURDEN, J.

Presently before the Court is the Motion for Postconviction Relief of Defendant, Angelo Clark, who alleges that he was denied effective assistance of counsel when he pled guilty to fourth degree rape on May 26, 2005. Clark complains that he is entitled to have his guilty plea set aside because his counsel failed to inform the Court that he was unable to understand the plea proceeding due to his mental illness. For the reasons that follow, Clark's motion is **DENIED in part.**¹

FACTUAL AND PROCEDURAL BACKGROUND

On July 26, 2004, a Grand Jury indicted Clark on three counts of second degree rape.² The charges arose from a May 7, 2004 incident at the Rockford Center in Newark, Delaware, where Clark and the victim were patients.³ On May 26, 2005, Clark accepted a plea agreement for one count of fourth degree rape.⁴ The Court sentenced Clark on September 30, 2005, to serve fifteen years at Level 5 incarceration, suspended after ten years for two years at Level 4 at the Plummer Center, suspended after six months for one year and six months at Level 3 probation.⁵ On February 10, 2006, this Court denied Clark's Motion for Sentence Modification. Clark filed the instant motions on August 1, 2006.

¹ Clark makes additional claims about the sentencing proceeding, which will be addressed in a separate decision by the sentencing judge. Clark's Motion for Appointment of Counsel will be addressed subsequently.

² See Indictment True Bill, *State v. Clark*, No. 0406018386, D.I. 1.

³ See Affidavit of Probable Cause (June 16, 2004).

⁴ See Plea Agreement, *State v. Clark*, No. 0406018386, D.I. 15.

⁵ See Sentencing Order, *State v. Clark*, No. 0406018386, D.I. 24.

DISCUSSION

When presented with a motion for postconviction relief, this Court must determine whether any of the procedural bars under Superior Court Criminal Rule 61 are applicable before considering the merits of the claims.⁶ Upon review of the record, Clark's motion, which is his first petition for postconviction relief, is timely. Clark's claims of ineffective assistance of counsel, however, were not raised previously, as required by Rule 61(i)(3). In order to raise an issue for the first time in a motion for postconviction relief, a movant must demonstrate that there is "[c]ause for relief from the procedural default and [p]rejudice from violation of the movant's rights."⁷ When a movant attempts to bypass the procedural bars by claiming that his Sixth Amendment right to effective counsel has been violated, he must demonstrate ineffective assistance of counsel.⁸ "[A]ttorney error short of ineffective assistance of counsel does not constitute 'cause' for a procedural default."⁹

To establish a claim for ineffective assistance of counsel, the defendant cannot make mere allegations of ineffective assistance of counsel, but must provide specific claims of actual prejudice and substantiate them.¹⁰ A movant must demonstrate that "'counsel's representation fell below an objective standard of reasonableness,' and 'that there is a

⁶ *Younger v. State*, 580 A.2d 552, 554 (Del.1990).

⁷ Super. Ct. Crim. R. 61(i)(3). *See also State v. Grayson*, 1993 WL 1610479, at *1 (Del. Super.).

⁸ *Grayson*, 1993 WL 1610479, at *1.

⁹ *Id.* (citing *Younger*, 580 A.2d at 556; *Flamer v. State*, 585 A.2d 736, 747 (Del. 1990)).

¹⁰ *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996)(citing *Younger*, 580 A.2d at 555-56; Super. Ct. Crim. R. 61(b)(2)).

reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’”¹¹ The two-pronged *Strickland* test, as it is generally known, has been applied to “guilty plea challenges based on a claim of ineffective assistance of counsel.”¹²

Under the first prong of the *Strickland* standard, the defendant bears the burden of rebutting the “strong presumption that counsel’s conduct was professionally reasonable.”¹³ In order to prove prejudice under the second prong, a movant seeking to challenge a guilty plea must show that ““there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.””¹⁴

In order for a claim of ineffective assistance of counsel to survive, both prongs of the *Strickland* test must be established.¹⁵ The Court may choose to begin its analysis with the second prong, showing of prejudice, if it is central to the defendant’s claim.¹⁶ “In other words, if the Court finds that there is no possibility of prejudice even if a defendant’s allegations regarding counsel’s representation were true, the Court may dispose of the claim

¹¹ *Albury v. State*, 551 A.2d 53, 58 (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)).

¹² *Id.* (citing *Hill v. Lockhart*, 474 U.S. 52, 58 (1985)).

¹³ *Id.* at 59 (citing *Strickland*, 466 U.S. at 689); *State v. Slade*, 2002 WL 1974023, at *4 (Del. Super.) (citing *Strickland*, 466 U.S. at 689; *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996); *Wright*, 671 A.2d at 1356).

¹⁴ *Id.* at 60 (quoting *Hill*, 474 U.S. at 58).

¹⁵ *Slade*, 2002 WL 1974023, at *4 (citing *Strickland*, 466 A.2d at 687).

¹⁶ *Id.* (citing *Strickland*, 466 A.2d at 697) (“If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.”).

on this basis alone.”¹⁷

Clark claims that he was unable to understand the plea proceedings due to his mental illness; therefore, he was not competent to plead guilty. Clark argues that his counsel’s failure to inform the Court that he was incompetent denied him the opportunity to undergo a mental health examination to determine if he had the *mens rea* to commit the rape. Clark’s argument is unpersuasive. During the course of the proceedings, Clark underwent two psychiatric evaluations. The Court ordered the first evaluation on September 20, 2004, to determine whether Clark was competent to stand trial. The court ordered the second evaluation on May 26, 2005, to establish whether a plea of guilty but mentally ill was appropriate.

Pursuant to the Court’s orders, Clark was evaluated by psychiatrist, David E. Raskin, M.D., on November 8, 2004, and psychologist, Kathryn Sheneman, Psy.D., J.D., on June 27, 2005. The experts’ reports indicated that although Clark suffered brain damage in an automobile accident in 1977 and was being treated with medication for bipolar disorder, Clark understood the charges against him and the legal process in general. According to Dr. Raskin:

Mr. Clark understands the way the legal system operates, the role of Judge, jury, prosecutor, and defense attorney, charges, possible sentences, etc. Mr. Clark in addition appears to be treated with Depakote for what sounds like a bipolar disorder. At the time of my interview he did not demonstrate any

¹⁷ *Id.* (citing *State v. Gattis*, 1995 WL 790961, at *4 (Del.Super.).

evidence for mental illness.¹⁸

Dr. Raskin further opined that Clark did not require any additional psychiatric treatment to supplement the treatment he was already receiving.¹⁹ Additionally, Dr. Sheneman found that at the time of the incident, Clark was able to exercise the will power to refrain from acting, despite his mental impairment, which affected his ability to appreciate proper boundaries.²⁰

Clark has not established that his counsel failed to inform the Court that Clark was unable to understand the plea proceedings because of his mental illness. At the time of Clark's guilty plea, the Court had the benefit of Dr. Raskin's report, which detailed Clark's mental illness and opined that Clark understood the charges and the legal process. Moreover, the Court's awareness of Clark's history of mental illness was evidenced by the subsequent order for a psychological evaluation to determine whether a plea of guilty but mentally ill was appropriate. Therefore, the conduct of Clark's counsel at the plea proceeding was reasonable and did not rise to the level of professional error.

CONCLUSION

For the aforementioned reasons, the Motion for Postconviction Relief of Defendant, Angelo Clark, is **DENIED in part**. Clark has failed to demonstrate that he was denied effective assistance of counsel in conjunction with his guilty plea. Clark's additional ground for relief related to the sentencing proceeding will be addressed in a subsequent decision by

¹⁸ Report of David E. Raskin, M.D., dated November 8, 2004, D.I. 9.

¹⁹ *Id.*

²⁰ Report of Kathryn M. Sheneman, Psy.D., J.D., dated June 27, 2005, D.I. 20.

the sentencing judge.

IT IS SO ORDERED.

Jan R. Jurden
Judge

cc: Prothonotary
Mr. Angelo Clark
Hon. Richard R. Cooch